

Before the  
Federal Communications Commission  
Washington, D.C. 20554

In the Matter of	)	File No. EB-02-TC-037
	)	
Time Warner Entertainment Company, LP	)	CUID No. WI0265 (West Allis)
	)	
Petition for Reconsideration	)	

**ORDER**

**Adopted: October 30, 2002**

**Released: October 31, 2002**

By the Chief, Enforcement Bureau:

1. In this Order, we consider a petition for reconsideration ("Petition") of Order, DA 02-1050 ("Prior Order"),<sup>1</sup> filed with the Commission by the above-referenced operator ("Operator").<sup>2</sup> In the Prior Order, we found Operator's cable programming services tier ("CPST") rates to be unreasonable for the period from May 15, 1994 through March 31, 1999 and ordered refunds. In this Order we deny Operator's Petition and calculate Operator's refund liability.

2. Under the provisions of the Communications Act<sup>3</sup> that were in effect at the time the referenced complaints were filed, the Commission was authorized to review the CPST rates of cable systems not subject to effective competition to ensure that rates charged are not unreasonable. The Cable Television Consumer Protection and Competition Act of 1992<sup>4</sup> ("1992 Cable Act") required the Commission to review CPST rates upon the filing of a valid complaint by a subscriber or local franchising authority ("LFA"). The filing of a complete and timely complaint triggers an obligation upon the cable operator to file a justification of its CPST rates.<sup>5</sup> The Operator has the burden of demonstrating that the CPST rates complained about are reasonable.<sup>6</sup> If the Commission finds a rate to be unreasonable, it shall determine the correct rate and any refund liability.<sup>7</sup>

3. In its Petition, Operator does not challenge any of the substantive findings of the Prior Order. Operator argues that because the cable system was purchased by Time Warner Cable, and the Commission entered into a Social Contract<sup>8</sup> with Time Warner Cable in 1995, any overcharges by the

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<sup>1</sup> See *In The Matter of Time Warner Entertainment Company, LP*, DA 02-1050, 17 FCC Rcd 8320 (EB 2002).

<sup>2</sup> The term "Operator" includes Operator's successors and predecessors in interest.

<sup>3</sup> Communications Act, Section 623(c), *as amended*, 47 U.S.C. §543(c) (1996).

<sup>4</sup> Pub. L. No. 102-385, 106 Stat. 1460 (1992).

<sup>5</sup> See Section 76.956 of the Commission's rules, 47 C.F.R. § 76.956.

<sup>6</sup> *Id.*

<sup>7</sup> See Section 76.957 of the Commission's rules, 47 C.F.R. § 76.957.

<sup>8</sup> *In the Matter of Social Contract for Time Warner*, FCC 95-478, 11 FCC Rcd 2788 (1996).

previous owner prior to the sale and by Operator after the sale were resolved by the Social Contract. Operator does not provide any argument in support of its proposition other than citing to *Jones Cable*.<sup>9</sup> In *Jones Cable*, the Enforcement Bureau acknowledged that a previous Cable Services Bureau Order, DA 98-1026 ("*Rittman Order*")<sup>10</sup> had concluded that complaints filed against the operator in Rittman, Ohio had been resolved by the Social Contract and a subsequent Order.<sup>11</sup> Because the *Rittman Order* did not explicitly dispose of a pending application for review of DA 95-1742<sup>12</sup> (the first order resolving the referenced complaints), the Enforcement Bureau vacated DA 95-1742 on its own motion and dismissed the application for review as moot.

4. Unlike the underlying circumstances in the *Rittman Order*, in this case Operator did not acquire this system shortly after the Social Contract was entered into, no order was issued incorporating this system into the Social Contract and resolving pending matters, and no Cable Services Bureau order was issued acknowledging a resolution of pending complaints. Paragraph 6 of the Social Contract states that the Social Contract will resolve Time Warner Cable's pending CPST cases, including complaints filed against recently acquired systems, because Time Warner Cable was making cash refunds in the form of bill credits totaling \$4.7 million plus interest. Because the *Rittman Order* does not specify what arrangements were made by Time Warner Cable to resolve the referenced complaints, we can only assume that arrangements were made to address refund liability in that case. In any event, Operator offers no argument or facts from which we could conclude that Operator's refund liability in this case has been satisfied. There are no facts in this case that would support Operator's proposition that its refund liability in this case has been satisfied merely because the system was purchased by Time Warner Cable. Therefore, we deny Operator's Petition.

5. Because Operator did not file a refund plan, we calculate Operator's refund liability as follows: For the period from May 15, 1994 through July 14, 1994, we calculate an overcharge of \$0.26 per month per subscriber. Operator's actual CPST rate for this period was \$10.27 and its maximum permitted rate ("MPR") was \$10.01. For the period July 15, 1994 through July 31, 1994, we calculate an overcharge of \$0.31 per month per subscriber. Operator's actual CPST rate for this period was \$10.27 and its MPR was \$9.96. For the period August 1, 1994 through September 30, 1994, we calculate an overcharge of \$0.59 per month per subscriber. Operator's actual CPST rate for this period was \$10.55 and its MPR was \$9.96. For the period October 1, 1994 through October 31, 1994, we calculate an overcharge of \$0.41 per month per subscriber. Operator's actual CPST rate for this period was \$10.55 and its MPR was \$10.14. For the period November 1, 1994 through December 31, 1994, we calculate an overcharge of \$1.21 per month per subscriber. Operator's actual CPST rate for this period was \$11.35 and its MPR was \$10.14. For the period January 1, 1995 through March 31, 1995, we calculate an overcharge of \$1.01 per month per subscriber. Operator's actual CPST rate for this period was \$11.35 and its MPR was \$10.34. For the period April 1, 1995 through May 31, 1995, we calculate an overcharge of \$1.08 per month per subscriber. Operator's actual CPST rate for this period was \$11.35 and its MPR was \$10.27. For the period June 1, 1995 through June 30, 1995, we calculate an overcharge of \$1.21 per month per subscriber. Operator's actual CPST rate for this period was \$11.48 and its MPR was \$10.27. For the period December 1, 1998 through December 31, 1998, we calculate an overcharge of \$4.52 per month per subscriber. Operator's actual CPST rate for this period

<sup>9</sup> *In the Matter of Jones Intercable, Inc., Jones Spacelink of Ohio*, DA 02-1059, 17 FCC Rcd 8351 (EB 2002).

<sup>10</sup> *See In the Matter of Time Warner Cable*, DA 98-1026, 13 FCC Rcd 13813 (CSB 1998).

<sup>11</sup> *In the Matter of Time Warner Cable Social Contract*, FCC 96-2192, 12 FCC Rcd 14881 (1996).

<sup>12</sup> *In the Matter of Jones Spacelink of Ohio*, DA 95-1742, 10 FCC Rcd 9802 (CSB 1995).

was \$16.30 and its MPR was \$11.78. For the period January 1, 1999 through March 31, 1999, we calculate an overcharge of \$6.96 per month per subscriber. Operator's actual CPST rate for this period was \$18.28 and its MPR was \$11.32.<sup>13</sup> Our total calculation, including interest on the overcharges through November 30, 2002, equals \$773,350.00. Our calculation does not include franchise fees. We order Operator to refund this amount, plus any additional interest accrued to the date of refund, plus franchise fees, if any, and interest on the franchise fee principal amount, to its CPST subscribers within 60 days of the release of this Order.

6. Accordingly, IT IS ORDERED, pursuant to Section 1.106 of the Commission's rules, 47 C.F.R. § 1.106, that the petition for reconsideration filed by Operator is DENIED.

7. IT IS FURTHER ORDERED, pursuant to Sections 0.111, 0.311 and 76.962 of the Commission's rules, 47 C.F.R. §§ 0.111, 0.311 and §76.962, that Operator shall refund to subscribers in the franchise area referenced above the total amount of \$773,350.00, plus any additional interest accruing between November 30, 2002 and the date of refund, plus franchise fees, if any, and interest on the franchise fee principal amount within 60 days of the release of this Order.

8. IT IS FURTHER ORDERED, pursuant to Sections 0.111, 0.311 and 76.962 of the Commission's rules, 47 C.F.R. §§ 0.111, 0.311 and §76.962, that Operator file a certificate of compliance with the Chief, Enforcement Bureau, within 90 days of the release of this Order certifying its compliance with this Order.

FEDERAL COMMUNICATIONS COMMISSION

David H. Solomon  
Chief, Enforcement Bureau

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<sup>13</sup> Operator's refund liability for the period July 1, 1995 through November 30, 1998 was trued-up in Operator's subsequent FCC Form 1240s that were reviewed in the Prior Order. Therefore, Operator is not required to separately calculate that refund liability. We note that, although Operator's trued-up refund liability was spread over the entire 1999 FCC Form 1240 period, because our jurisdiction over CPST rates ended as of March 31, 1999, we cannot order Operator to provide refunds for overcharges for CPST services provided after March 31, 1999.